APPALACHIAN REGIONAL COMMISSION

A Proud Past, A New Vision

Office of the Federal Co-Chairman

June 26, 2001

Mr. Jeffrey Berg, Acting Director
Community Development Financial
Institutions Fund
U.S. Department of Treasury
601 13th Street, N.W., Suite 200 South
Washington, D.C. 20005

CC:M&SP:RU (REG-119436-01)
Internal Revenue Service – Room 5226
P.O. Box 7604 Ben Franklin Station
Washington, D.C. 20044

Dear Mr. Berg and IRS representatives:

The Appalachian Regional Commission has undertaken a five year $17 million effort to promote entrepreneurship in the rural 13-state region of Appalachia. The Commission and our state partners have invested in over 200 projects which are projected to create more than 4,000 jobs and 600 new businesses. Our communities have identified the need for capital, to both finance start up businesses and to help existing firms expand, as one of the critical gaps in the infrastructure for entrepreneurs. The Commission – both the Federal partner represented by myself and the Governors of our 13 member states – are encouraged by the opportunities provided by the New Markets Tax Credit (NMTC) program. We look forward to working with the Department of Treasury to ensure that our rural communities take advantage of this important new program.

In preparing our response to your questions issued for public comment, ARC convened groups of financing entities throughout Appalachia to gauge their interest in, and receive their comments on, the NMTC program. We have received comments from our Local Development Districts, a group of 71 multi-county economic develop entities, many of whom operate revolving loan funds. We also received comments from CDFI lenders and from emerging development venture capital funds in the region. Attached are priorities identified by these organizations. If you have any questions or would like clarification on these items, please do not hesitate to contact our offices.

Sincerely,

Jesse L. White, Jr.
Federal Co-Chairman

Cc: Governors – Appalachian Regional Commission

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Alabama Georgia Kentucky Maryland Mississippi New York North Carolina Ohio Pennsylvania South Carolina Tennessee Virginia West Virginia

Appalachian Regional Commission
New Markets Tax Credit
Comments
June 21, 2001

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Broadly, ARC has concern regarding the eligibility of census tracks for the New Markets Tax Credit program. Since state median income is used to determine eligibility, Appalachia has communities, for example, in West Virginia and Kentucky that are ineligible for participation, yet due to higher median incomes in neighboring states, border wealthier eligible communities. Similarly, there are Appalachian counties ineligible to participate in the program which are much poorer then eligible communities in wealthier parts of the nations, like Massachusetts or Connecticut.

ARC recommends that the definition of low income community be expanded to include median family income that does not exceed 80% of the *national* median family income. This definition could be added to the existing definitions of eligible low income community. ARC understands these change would require legislative action, and would recommend such legislative modifications should Treasury contemplate technical changes in the legislation to improve the functioning of the NMTC program.

Comment on Pending Issues: Community Development Financial Institutions Fund

1. How should the fund prioritize allocations of tax credits?

The Commission recommends that priority be given to both existing organizations with track records of providing assistance and capital to low income communities, and to new organizations that meet CDE eligibility requirements. We recommend that preference points be awarded to applicants that provide new service to demonstrably underserved areas, and that preference points be awarded to applicants that demonstrate the existing services they provide are not sufficient to meet the demand for these service.

2. Should there be limits on tax credit allocations to an applicant?

The Commission recommends that limits be placed on the amount of tax credits allocated to an individual CDE in a given year. Potential applicants in our region are concerned that larger urban communities could request significant portions of the annual allocation of the tax credits. Placing limits on tax credit allocations, especially in the early years of the NMTC program, would help ensure a more geographically balanced distribution of allocations.

Comment on Guidance: Internal Revenue Service

1. Substantially all tests, timing of investments.

Rural CDE's will likely incur significant costs associated with developing deal flow and providing technical assistance to rural businesses. Therefore, ARC recommends that 'substantially all' be defined as 85% of the cash committed to, or invested in, eligible investments. Additionally, developing deal flow and closing on financings can be a long term process in rural communities. ARC recommends that a CDE have one year to invest cash (either from a qualified equity investment or repayments of equity or principal) in qualified community investments. During the term of the seven year NMTC program, should a CDE be deemed not in compliance with these or other provisions, a period for cure should be allowed.

3. Determination of qualified low income community investment.

Many rural businesses derive most of their income from customers outside the eligible low income areas. For example, service business may provide their services, and send their employees, to customer sites outside of the rural low income area. Similarly, the assets of a rural business may be deployed outside of the rural low income area. For example, a transportation firm or a construction firm may deploy significant assets outside of qualified areas. ARC recommends the definition of a qualified investment be expanded to address these concerns. For example, if the business is located in an eligible community and the majority of employees are residents of eligible communities, the business would also be deemed to qualify.

Determinations for qualified investment status should be made at the time of the investment by the CDE, unless the CDE has majority control of the business.

Formation of new business is critical for rural communities, and rules should be provided to encourage CDEs to finance start up firms located in eligible low income communities.

5. Investments from one CDE in another CDE.

The purpose of the NMTC program is to target investment to underserved communities. ARC believes that should one CDE receive an investment from another CDE, the recipient CDE should continue to employ all the programmatic and investment guidelines of the NMTC program for the investment received.

6. Recapture.

A period to cure, perhaps through substitution of other qualifying investments, should be employed before recapture of the tax credits.